

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

JUDY SHAW,)	
)	
Plaintiff,)	
vs.)	NO. CIV-05-0278-HE
)	
JO ANNE B. BARNHART,)	
COMMISSIONER SOCIAL SECURITY)	
ADMINISTRATION,)	
)	
Defendant.)	

ORDER

Plaintiff Judy Shaw instituted this action seeking injunctive relief under the Freedom of Information Act (“FOIA”), the Electronic Freedom of Information Act and the Privacy Act, contending the Social Security Administration improperly withheld her claim file pertaining to her application for disability benefits. Consistent with 28 U.S.C. §636(b)(1)(B), the matter was referred for initial proceedings to Magistrate Judge Gary M. Purcell, who has recommended that a motion to dismiss filed by the defendant be converted to a motion for summary judgment¹ and be granted.

The magistrate judge found that the defendant had made the plaintiff’s claim file available to her and/or her attorney at the defendant’s Oklahoma City Office of Hearings and Appeals. The defendant had not, he concluded, violated either the Privacy Act or the FOIA by failing to provide the plaintiff with a free copy of her claim file in the requested electronic

¹*The magistrate judge noted that both the plaintiff and defendant had submitted documentary evidence for the court’s consideration in resolving the defendant’s motion to dismiss.*

format.² The defendant was, Magistrate Judge Purcell determined, entitled to summary judgment, there being no disputed facts precluding its entry. He also found that the plaintiff had not “substantially prevailed” and, thus, was not entitled to an award of attorney’s fees .

The plaintiff failed to object to the Report and Recommendation, and, consequently, waived her right to appellate review of the factual and legal issues it addressed. United States v. One Parcel of Real Property, 73 F.3d 1057, 1059-60 (10th Cir. 1996), *cert. denied*, 519 U.S. 909 (1996). *See* 28 U.S.C. § 636(b)(1)(C); LCvR72.1(a). The court also has reviewed the Report and Recommendation and concurs with the magistrate judge’s analysis of the plaintiff’s claims.


Accordingly, the court adopts Magistrate Judge Purcell’s Report and Recommendation and **GRANTS** the defendant’s motion to dismiss [Doc. Nos. 14 and 15],³ converted to a motion for summary judgment.

²*The magistrate judge found that because the plaintiff had not indicated until her response to the defendant’s motion that she was physically unable to review the claim file in the defendant’s Oklahoma City office and had not stated why her attorney representative could not review it there, the defendant had not considered whether the plaintiff should be given a photocopy of her file. Therefore, Magistrate Judge Purcell, concluded, the plaintiff’s request for an injunction requiring the defendant to send her a free copy of her claim file was premature.*

³*The defendant’s motion to dismiss was docketed twice as Doc. Nos. 14 and 15.*

IT IS SO ORDERED.

Dated this 2nd day of June, 2005.



JOE HEATON
UNITED STATES DISTRICT JUDGE